

In the Matter of Merchant Mariner's Document No. Z-34129-R and all
other Documents

Issued to: GERMAN VINCENT TORRES MARTINEZ

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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GERMAN VINCENT TORRES MARTINEZ

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec.137.11-1.

By order dated 16 April 1956, an Examiner of the United States Coast Guard at Honolulu, T. H., revoked Merchant Mariner's Document No. Z-345129R issued to German Vincent Torres Martinez upon finding him guilty of misconduct based upon one specification alleging in substance that while serving as deck maintenanceman on board the American SS PRESIDENT WILSON under authority of the document above described, on or about 15 January 1956, while said vessel was in the port of Honolulu, T. H., he wrongfully had in his possession certain narcotics, to wit: two marihuana cigarettes.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the two possible results of the hearing - revocation or dismissal. Although advised of his right to be represented by counsel of his own choice, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and specification proffered against him.

The Investigating Officer made his opening statement. He then introduced in evidence testimony by two Customs Officials and the report of analysis by a Customs chemist.

In defense, Appellant offered in evidence his sworn testimony that the cigarette package originally was not his; that he had picked up the package from a table in the crew's recreation hall aboard the SS PRESIDENT WILSON; that he was unaware of the fact that it contained marihuana cigarettes; and that he had served in the Merchant Marine for 25 years with a clear record. Appellant also submitted an affidavit from a fellow crew-member in which the affiant stated he had seen a package of cigarettes of the same brand as that containing the marihuana on a table in the recreation hall at a time shortly before the time Appellant said he had picked it up there.

The Examiner recessed the hearing on 12 April until 16 April 1956 in order to give Appellant additional time to develop and present his defense to the specification. Upon Appellant's failure

to appear on 16 April, the Examiner announced his decision and concluded that the charge and specification had been proved. He then entered the order revoking Merchant Mariner's Document No. Z-34129-R and all other documents issued to Appellant by the United States Coast Guard.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 15 January 1956, Appellant was serving as deck maintenanceman on the American SS PRESIDENT WILSON and acting under authority of his Merchant Mariner's Document No. Z-34129-R while the ship was docked at Honolulu, T. H.

On 15 January 1956, Appellant had just left the ship when he was searched by a U.S. Customs Port Patrol Officer. The latter took from Appellant's shirt pocket a Lucky Strike package containing cigarettes. Among the regular cigarettes in the package, the Customs Officer found two cigarettes wrapped in brown paper which, upon later chemical analysis, were found to contain marihuana. Appellant denied any knowledge concerning the presence of these two cigarettes. A subsequent search of Appellant's room and clothing aboard the PRESIDENT WILSON disclosed, in appellant's jacket pocket, a single piece of brown cigarette paper similar to the paper used to make the two marihuana cigarettes.

As a result of this incident, Appellant was removed from the PRESIDENT WILSON by Customs officers who referred the case to the U. S. Attorney in Honolulu. The latter decided not to prosecute but suggested the referral of this case to the Coast Guard.

Appellant has served on merchant ships of about 25 years with a clear record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that:

1. Appellant had picked up the Lucky Strike cigarette package from a table in the crew's recreation hall aboard the PRESIDENT WILSON and he did not know that it contained marihuana cigarettes.
2. He used the single brown cigarette paper found in his suit jacket pocket in his locker aboard ship for cleaning his glasses.
3. Clemency should be considered in view of Appellant's unblemished record.

OPINION

Appellant does not deny that the cigarette package taken from his shirt pocket by the Customs

Port Patrol Officer continued two marihuana cigarettes. Such possession of narcotics raises a presumption that Appellant had knowledge of the presence of the marihuana cigarettes. The Examiner, as the trier of the facts, was in the best position to evaluate the credibility of witnesses, including Appellant, and has rejected Appellant's denial of knowledge. The location in Appellant's jacket of a piece of brown paper, similar to that paper used to make the two marihuana cigarettes, reflects upon the credibility of Appellant's testimony. Appellant's testimony, therefore, has failed to rebut the presumption of knowledge of possession.

The affidavit offered in behalf of Appellant, which was submitted by a fellow crew-member named Theo Doughty, states only that the affiant "saw a package of Lucky Strike cigarettes on the table in the after part of the [crew's] Recreation Hall" between 2300 and 2400 on 14 January 1956. This statement, standing alone, is not sufficiently conclusive to establish the truth of Appellant's testimony as to how he got possession of a cigarette package at some later time.

The evidence presented at the hearing conclusively showed possession by Appellant of narcotics, to wit, two marihuana cigarettes, and he has failed to rebut the presumption of knowledge of the presence of such cigarettes. Under 46 Code of Federal Regulations 137.03-1, the Examiner had no choice but to enter an order revoking Appellant's documents.

Although he was carefully informed by the Examiner of his right to counsel at the hearing, Appellant declined to retain counsel. The record shows, however, that the Examiner scrupulously kept Appellant informed of his rights during the proceedings and that in his direct and cross-examinations the Examiner followed an impartial line of questioning designed to bring out all material facts.

Due to the serious nature of offenses involving narcotics, it has consistently been the policy of the Commandant to revoke the documents of seamen found guilty of possessing marihuana. Appellant will be permitted to request the issuance of a new document after three years from the date on which his document was revoked. 46 CFR 137.03-30(a).

ORDER

The order of the Examiner dated at Honolulu, T. H., on 16 April 1956, is **AFFIRMED.**

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 16th day of August, 1956.